

APPEAL NO. 010734

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 14, 2001. With respect to the issues before her, the hearing officer determined that the Texas Workers' Compensation Commission (Commission) has jurisdiction to determine if the respondent (claimant) had disability as a result of her compensable injury of _____, from October 27, 2000, through the date of the hearing, March 14, 2001, and that the claimant had disability for that period. In its appeal, the appellant (carrier) asserts error in the hearing officer's jurisdictional determination. In the alternative, the carrier contends that the hearing officer's determination of the disability issue on the merits is against the great weight of the evidence. The appeal file does not contain a response to the carrier's appeal from the claimant.

DECISION

Affirmed.

A prior hearing was held on October 23, 2000, before the hearing officer who also presided in this case. There was a disability issue before the hearing officer at that hearing and she resolved it by determining that the claimant "had disability from the injury sustained on _____, from October 6 through October 26, 1999, and from December 15, 1999, through July 18, 2000, and at no other time." (Emphasis added.) Based on the emphasized language, the carrier argues that the Commission does not have jurisdiction to determine disability after October 23, 2000, because of the claimant's failure to file an appeal of that determination with the Appeals Panel. The carrier cites Lumbermens Mut. Cas. Co. v. Manasco, 971 S.W.2d 60 (Tex. 1998), and contends that the "issue of disability has already been litigated and become final." The Appeals Panel has long stated that a hearing officer does not have jurisdiction over prospective or unaccrued income benefits. Texas Workers' Compensation Commission Appeal No. 001941, decided September 25, 2000; Texas Workers' Compensation Commission Appeal No. 971871, decided October 29, 1997; Texas Workers' Compensation Commission Appeal No. 931049, decided December 31, 1993. Therefore, the hearing officer's decision necessarily covered only the facts up to the date of the prior hearing. We find no merit in the assertion that the decision in Manasco dictates a different outcome in this case. The flaw in the carrier's argument is that, unlike an impairment rating issue, the issue of disability is ongoing in nature. The hearing officer's inclusion of the phrase "and at no other time" in her conclusion of law addressing disability simply cannot serve to alter the fact that the issue of whether the claimant had disability after the date of the prior hearing was not, and could not properly be, before the hearing officer at that time. As such, the hearing officer correctly determined in this proceeding that the Commission had jurisdiction over the issue of whether the claimant had disability from October 27, 2000, through the date of the hearing.

The hearing officer likewise did not err in determining that the claimant had disability, as a result of her compensable injury, from October 27, 2000, to the date of the

hearing, March 14, 2001. The disability issue presented a question of fact for the hearing officer to resolve. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence and to decide what facts the evidence has established. Garza v. Commercial Ins. Co., 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). In this instance, there is sufficient evidence in the record to support the hearing officer's disability determination and nothing in our review of the record demonstrates that the challenged determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse the determination that the claimant had disability from October 27, 2000, through the date of the hearing on March 14, 2001, on appeal. Cain.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge